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INDUSTRIAL PENOLOGY¹

BY E. STAGG WHITIN, PH.D.,

General Secretary, National Committee on Prison Labor.

The state has a property right in the labor of the prisoner. The thirteenth amendment of the Constitution of the United States² provides that neither slavery nor involuntary servitude shall exist, yet by inference allows its continuance as punishment for crime, after due process of law. This property right the state may lease or retain for its own use, the manner being set forth in state constitutions and acts of legislatures. To make this of material value the prisoner's labor must be productive. The distribution of the product of the prisoner's labor inevitably presents the problem of competition, and the unfair competition between prison-made goods and those made by free labor has overshadowed the fundamental evil inherent in penal servitude and has caused confusion in the thought underlying prison labor regulation by legislative enactment.³

The usual penological analysis of prison labor into lease,⁴ contract, piece-price, public account and state-use systems is impossible to use in an economic analysis of the labor conditions involved. Economically two systems of convict production and two systems of distribution of convict-made goods exist; production is either by the state or under individual enterprise; distribution is either limited to the preferred state-use market or through the general competitive market. In the light of such classification the convict labor legislation of recent years shows definite tendencies toward the state's assumption of its responsibility for its own use

¹ In connection with the above article the reader's attention is called to Dr. Whitin's recent book on "Penal Servitude" (Pp. xi, 162. Price \$1.50. New York: National Committee on Prison Labor), a brief review of which appeared in the preceding issue of *THE ANNALS*. The volume is illustrated with photographs of prisons and of prison laborers under a variety of conditions. It gives a popular treatment of the subject, based on the investigations of the National Committee on Prison Labor.—EDITOR.

² Constitution of the United States, 13th Amendment: "Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction."

³ "Labor Legislation of 1911," in *American Labor Legislation Review*, vol. 1, No. 3, p. 122.

⁴ Charles R. Henderson, *Penal and Reformatory Institutions*, pp. 198-203.

of the prisoners on state lands, in state mines, and as operatives in state factories; while in distribution the competition of the open market, with its disastrous effect upon prices, tends to give place to the use of labor and commodities by the state itself in its manifold activities. Improvements like these in the production and distribution of the products mitigate evils but in no way affect the economic injustice always inherent under a slave system. The payment of wage as a right growing out of production of valuable commodities is the phase of this legislation which tends to destroy the slave condition. Such legislation has made its appearance, together with the first suggestion of right of choice allowed to the convict in regard to his occupation. These statutes still waver in an uncertain manner between the conception of the wage as a privilege, common to England⁵ and Germany,⁶ and the wage as a right as it exists in France.⁷ The development of the idea of the right of wage, fused as it is with the movement towards the governmental work and workshops, cannot fail to stand out in significance when viewed from the standpoint of the labor movement.

In a word, the economic progress in prison labor shown in recent legislation is toward more efficient production by the elimination of the profits of the lessee; more economical distribution of the products by the substitution of a preferred market, where the profits of the middleman are eliminated, in place of the unfair competition with the products of free labor in the market; and finally the curtailment of the slave system by the provision for wages and choice of occupation for the man in penal servitude.

Administrative development to meet the last session's legislative enactments marks the phase of the prison labor movement dominant in the year just closed (1912). The very framework of the state governments has had to be adapted to the efficient business methods required for the better adjustment of the interlocking functions of prison production for departmental consumption. Discussion of the varying methods to this end has been had at the House of Governors (Richmond, December), at the American Prison Association (Baltimore, November), at the American Institute of Criminal Law (Milwaukee, September) and at the National Conference of Charities and Correction (Cleveland, June). Enlisted

⁵ Charles R. Henderson, *Modern Prison Systems*, p. 128. 57th Congress, 2d Session, H. D., vol. 92.

⁶ Caesar Lombroso, *Crime, Its Causes and Remedies*, pp. 337-9.

⁷ Roux Roger, *Le Travail dans les Prisons*, p. 31.

in the actual readjustment have been the Board of Public Affairs of Wisconsin, the Efficiency Commission of Massachusetts, the Board of Administration of Ohio, the Board of Control and Supply of Rhode Island, Governor's Commissions in New York, Maryland and Iowa, a special Prison Labor Commission in New Jersey and the State Boards of Charities in Virginia and California. Governors, unaided by such agencies, in Arkansas, South Carolina and New Mexico, have resorted to the pardoning power to remedy the evil conditions. Direction of the movement has been shaped by the appearance of a little volume entitled, "Penal Servitude," prepared under the direction of the National Committee on Prison Labor and enthusiastically approved by the American Federation of Labor. Theodore Roosevelt included the programme in his social justice plank of the progressive platform; Woodrow Wilson presented it as a part of his labor record; while in numerous states, the platforms of all four parties declared for the principle. The introduction by Attorney-General Wickersham of a federal jail commission bill into Congress marks the activities of the Taft administration to secure an accurate investigation by a competent commission, while the passage of the Booher bill by the lower house placed Congress on record against the contract convict labor system. This movement must not be confused with the emotional expression and description of inhuman conditions in magazine articles and the sensational accounts of ex-convicts, which, while struggling to alleviate conditions inherent in the injustice of penal servitude, have failed to arouse the public to the more scientific, matter-of-fact and purely business-like phases and solutions of the difficulties which have to be faced by state administrations. The movement for scientific efficiency in prison administration has aptly been termed Industrial Penology.